

SENATE BILL 414  
By Ford J

AN ACT to amend Tennessee Code Annotated, Title 2, to enact the "Tennessee Voting Reform Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be called the "Tennessee Voting Reform Act."

SECTION 2.

(a) The legislature finds that:

(1) In the shadow of the terrorist attacks of September 11, 2001, it is essential that we strengthen American democracy. The stronger we make our democratic institutions, the better we as a nation are prepared to meet all challenges, foreign and domestic.

(2) The 2000 election exposed serious flaws in our nation's voting systems. Across the nation, more than 1.5 million Americans were disenfranchised because of faulty or obsolete systems, and as many as four million (4,000,000) more who wanted to vote were turned away or discouraged from voting.

(3) In 2000, many voters had their ballots for president invalidated because voting machines erroneously recorded overvotes or undervotes.

(4) It is also common for individuals to be improperly disenfranchised by the mechanics of the voter rolls. Some are denied the right to vote because their voter registration forms are lost in the system, while others are wrongfully purged from the voter rolls.

(5) And it is common for individuals to be wrongly turned away from voting because of mistakes by election officials, discrimination, voter intimidation, or voter suppression.

(6) In order to protect the right to vote for all citizens, the state must: establish a voter's bill of rights, requiring all local election officials to publicly post, distribute and comply with that bill of rights; mandate that all jurisdictions in the state use modern, accurate vote counting technology and a statewide voter registration database; require education and training for poll workers and the voting public; and create an election review commission to study and recommend future reforms.

(b) This act is enacted to protect and enhance that most basic right in a democracy: that all qualified adults are guaranteed the right to vote, and that all legal votes are counted.

SECTION 3. Tennessee Code Annotated, Title 2, Chapter 2, is amended by adding Sections 4 through 10 of this act as a new part.

SECTION 4. As used in this part:

(1) "Coordinator" means the state coordinator of elections.

(2) "County election commission" means persons appointed pursuant to Tennessee Code Annotated, Title 2, Chapter 12.

(3) "Election" means any federal, state or local election held in the state.

(4) "Election official" means the officers of elections, judges, voting machine operators, precinct and assistant precinct registrars, and inspectors appointed under this title.

(5) "Provisional ballot" means a secret ballot sealed in a specially-marked envelope, similar to an absentee ballot.

(6) "Vote counting system" means the system used by a county election commission to examine and count election ballots, either by machine or by hand.

#### SECTION 5.

(a) The county election commission shall require that a voter's bill of rights be posted at each polling place, include it with every distribution of official sample ballots, and ensure that the election officials at each polling place offer copies of it to voters at polling places, in accordance with procedures approved by the state coordinator of elections. The text of this document shall be as follows:

#### VOTER'S BILL OF RIGHTS

Every registered voter in this state has the right to:

- (1) Inspect a sample ballot before voting.
- (2) Cast a ballot if he or she is in line when the polls are closing.
- (3) Ask for and receive assistance in voting, including assistance in languages other than English where required by federal or state law.
- (4) Receive a replacement ballot if he or she makes a mistake prior to the ballot being cast.
- (5) Cast a provisional ballot if his or her eligibility to vote is in question.
- (6) Vote free from coercion or intimidation by election officials or any other person.
- (7) Cast a ballot using voting equipment that accurately counts all votes.

(b) In any political subdivision or precinct where federal or state law requires the ballot to be made available in a language other than English, the voter's bill of rights will also be made available in such language or languages.

#### SECTION 6.

(a) Sample ballots shall be made available at all polling places and any voter shall be permitted to inspect a sample ballot before voting.

(b) Any voter standing in line at a polling place at the time when polls are scheduled to close shall be permitted to vote.

(c) Any voter who spoils his or her ballot or makes an error may return the ballot to an election official and secure another ballot. A spoiled ballot will be preserved, without examination, in an envelope provided for that purpose.

(d) On election day, any person who seeks to vote but whose eligibility to vote is challenged by an election official shall be permitted to cast a provisional ballot. The envelope will identify the person casting the ballot and the reason the election official believes that person is ineligible to vote. After the polls close, the election official shall review the information on the envelope and determine if the person is eligible to vote in that county. If the person is determined to be eligible, the envelope shall be unsealed, the ballot counted, and registration records corrected to reflect the voter's eligibility for future elections. If the person is determined to be ineligible, the envelope shall remain sealed and the person shall be notified in writing within ten (10) days the reason for the rejection.

SECTION 7. The coordinator of elections shall develop and maintain an online, statewide voter registration database that county election commissions must use. All county election commissions must use procedures designated by the coordinator for adding, maintaining and removing names from the statewide voter registration database. These procedures shall provide statewide uniformity and accuracy in the composition and operation of

these lists. The database must include, at a minimum: each voter's name, address, date of birth, gender, voting precinct, and the number of the school district, county and/or municipal legislative districts, state legislative districts, and congressional district in which such voter resides. No privately collected database and no private company may be used to purge voters from the statewide voter registration database. Voters shall have the ability to easily check the accuracy of their voter registration records.

#### SECTION 8.

(a) There is established a permanent state commission known as the election review commission.

(b) The election review commission shall be composed of nine (9) members, including the chair appointed by the governor, and two (2) members recommended by each of the following: the speaker of the senate, the senate minority leader, the speaker of the house, and the house minority leader. Of the nine (9) members, at least five (5) shall not be government officials or employees, and shall represent academia, nonprofit organizations, the faith community, labor unions, and industry.

(c) Following each general election, the election review commission shall conduct a study of the coordinator of elections to:

(1) Determine whether state election laws and regulations were followed in the prior election cycle, and if not, why they were not followed;

(2) Determine whether current election procedures are fair and appropriate;

(3) Determine the number and percentage of overvotes and undervotes in the prior elections, along with the reasons for these overvotes and undervotes, and other information as may be useful in evaluating the performance of state voting systems, and identifying problems with ballot design and instructions which may have contributed to overvotes and undervotes;

(4) Determine whether precincts have adequate facilities for the number of voters served;

(5) Examine what election practices or proposals increase or diminish voter participation; and

(6) Recommend how election procedures can and should be improved.

(d) The election review commission shall report its findings and recommendations to the legislature on or before February 1 following each general election.

SECTION 9. Nothing in this act may be construed to authorize or require conduct prohibited under the following laws:

(1) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).

(2) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(3) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ff et seq.).

(4) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(5) The Americans with Disabilities Act of 1990 (42 U.S.C. 1994 et seq.).

SECTION 10.

(a) It is an offense for any person to willfully violate the provisions of this part.

(b) An offense under this part is a Class A misdemeanor, punishable by up to one year in prison, or a fine up to ten thousand dollars (\$10,000), or both.

SECTION 11. Tennessee Code Annotated, Section 2-9-117, is amended by designating the existing language as subsection (a) and by adding the following language as a new subsection to be appropriately designated:

(b) For elections held on and after January 1, 2004, the state coordinator of elections and the state election commission shall only approve the use of electronic

devices which directly record voters' choices or optical scanning devices which scan voters' marked paper ballots at each polling place. Such devices must also meet the following requirements:

(1) The voting system must permit the voter to verify his or her selections and correct any errors before the ballot is counted.

(2) If the voter selects votes for more than one candidate for a single office, the voting system must notify the voter and permit the voter to correct his or her selections before the ballot is counted.

(3) If the voter selects votes for fewer than the number of candidates for which votes may be cast, the voting system must notify the voter and permit the voter to alter his or her selections before the ballot is counted.

(4) The voting system must produce a record with an audit capacity for each ballot cast.

(5) The voting system must be accessible to individuals with disabilities and other special needs, and be capable of providing ballots in languages other than English where required by federal or state law.

(6) The voting system must provide accuracy, reliability, security from fraud, and ease of use.

(c) The state coordinator of elections and the state election commission may approve the use of hand-counted or optical scan-counted paper ballots which do not comply with subsection (b) for absentee ballots, provisional ballots, and for counties with fewer than ten thousand (10,000) registered voters.

(d) The state coordinator of elections and the state election commission shall designate and graphically depict uniform primary and general election ballot designs for each approved vote counting system. County election commissions must follow these uniform ballot designs.

SECTION 12. Tennessee Code Annotated, Section 2-11-202(a), is amended by adding the following language as new, appropriately designated subdivisions:

( ) Develop a training seminar to be conducted by the county election commissions for precinct election officials. No person shall serve as a precinct election official unless such person has completed such training within the previous two (2) years, conducted by the county election commission prior to each primary, general and special election, for the purpose of instructing such persons in their duties and responsibilities.

( ) Create a uniform polling place procedures manual and adopt the manual by regulation promulgated in accordance with the uniform administrative procedures act and ensure that county election commissions make the manual available in hard copy or electronic form in every precinct on election day. The manual shall guide local election officials in the proper implementation of election laws and procedures. The manual shall be indexed by subject and written in clear and unambiguous language. The manual shall provide specific examples of common problems encountered at the polls on election day, and detail specific procedures for resolving those problems. The manual shall include, but not be limited to, the following:

(1) Regulations governing solicitation by individuals and groups at the polling place.

(2) Procedures to be followed with respect to voters whose names are not on the precinct register.

(3) Proper operation of the voting system.

(4) Ballot handling procedures.

(5) Procedures governing spoiled ballots.

(6) Procedures to be followed after the polls close.

(7) Rights of voters at the polls.



(8) Procedures for handling emergency situations.

(9) Handling and processing of provisional ballots.

(10) Security procedures.

( ) Adopt regulations prescribing minimum standards for nonpartisan voter education to be implemented by each county election commission in conjunction with community organizations and leaders, and conduct additional nonpartisan education efforts as necessary to ensure voters have a working knowledge of the voting process. The minimum voter education standards shall address, but not be limited to, the following subjects:

(1) Voter registration.

(2) Balloting procedures, absentee ballots and polling place.

(3) Voter rights and responsibilities.

(4) Distribution of sample ballots.

(5) Public service announcements.

SECTION 13. This act shall take effect July 1, 2003, the public welfare requiring it.